

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NOS. 18312 - 18313 OF 1992

BETWEEN :

IN W.P.NO. 18312/92

1. Bhimappa Siddappa Muthyappa Gol,
age 71 years
2. Balappa Siddappa Mutyappa Gol,
age : 55 years
3. Sidraj, S/o Sidramappa Mutyappa Gol,
age 40 years

All Residents of Kurabara Oni,
Gokak, Dist : Belgaum

IN W.P.NO. 18313/92

1. Nagappa Lagama Poojari,
age 50 years
2. Kariyappa Lagama Poojari,
age 45 years
3. Hanumanth Lagama Poojari,
age 42 years

All residents of Kurubara Oni,
Gokak, Dist : Belgaum

.. PETITIONERS

(Sri Jayakumar S. Patil, Advocate
for petitioners)

A N D :

1. The Deputy Commissioner,
Belgaum District, Belgaum
2. The Assistant Commissioner,
Bailhongal Sub Division,
Bailhongal
3. The Tahsildar,
Gokak Taluk, Gokak
4. Bimanaik, S/o Dharma Naik Patil,
R/o 3793, Guruwarpet,
Gokak, Dist : Belgaum
5. Raosaheb Dharama Naik Patil,
R/o Murgod, Taluk : Soudathi,
Dist : Belgaum
6. Hanumanaik S/o Dharama Naik Patil,
Jail Superintendent, Gulbarga
7. Ramachandra Dharama Naik Patil,
R/o 3793, Guruwarpet,
Gokak, Dist : Belgaum
8. Meenakshi, W/o Dammaraaj Naik Patil,
R/o Khanugaum, Tq. Gokak,
Dist : Belgaum
9. Chandra Bai, W/o Devaraj Desai,
age : 35 years, R/o Gudamakeri,
Tq. Gokak, Dist : Belgaum

.. RESPONDENTS

(Sri O. Mahesh for R - 4 to 9

Sri T.P. Nambiar, A.G.A. for R -1 to 3)


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Writ Petitions filed under Articles 226 & 227 of the Constitution of India, praying to issue ; A writ of certiorari in the nature of a writ or order or direction quashing the order ANNEXURE -M dated 21-11-1974 in No. MVOA 1761 passed by respondent No. 2 and Annexure - N dated 18-3-1992 in No. WTNCR 61+62/91-92 passed by respondent No.3; A writ in the nature of mandamus or any other writ or order or direction directing the respondents 2 and 3 to regrant to the petitioners the occupancy rights of the land in question, etc.

These Writ Petitions coming on for Hearing, this day, the Court made the following :

O R D E R

Certain land was held as Inam land by one Dharma Naik. It is alleged that a suit for money was instituted against him and in execution of the decree, his interest in the property was sold. He had only a life interest and that interest only was sold. The petitioners herein who claim to be permanent tenants, purchased the said right in Court auction. Under the provisions of the Kamataka Village Offices Abolition



Abolition Act, which came into force on 1-2-1963, the right of hereditary village offices Dharma Naika made an application for re-grant. This application, it is alleged, was allowed on 21-11-1974 as per Annexure-M order. Subsequently, the petitioners claiming to be permanent tenants, made an application for assignment of the tenancy right. That application was rejected by Annexure-J order dated 29-11-1988. That rejection was challenged before this Court in W.Ps.Nos. 10764 & 10765 of 1991. In the rejection order, it is seen that there is a reference to the order dated 21-11-1974 (mistakenly shown as 21-11-1988) regranting the right to Dharma Naik. When this was brought to the notice of this Court, this Court opined as follows :

"It is seen from the order passed by the Tribunal that the land was re-granted in the name of Dharma Naik. The Tribunal has observed as under in this behalf :

" ಮೇಲ್ಕಾಣಿಸಿದ ಕಾರಣಗಳಿಂದಾಗಿ ಹಾಗೂ ಉಪ
ವಿಭಾಗಾಧಿಕಾರಿಗಳವರ ಅದೇಶ ನಂಬರೆ ಎರಡರಡಿ.
ಎಂದ ಎನೇರ 1761 ದಿನಾಂಕ 21-11-1988ರ

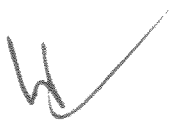
ಮೇಲೆಗೆ ಮೇಲಾಡಿದ ಜಮೀನು ಎದುರುದಾರರ
ತಂದೆಯಾದ ಧರ್ಮನಾಯಕ ಭೀಮನಾಯಕ ಪಾಟೀಲ
ಉದೇ ನಾಯಕ ಇವರ ಹೆಸರಿನಿಂದ ರಿಟಗ್ರಾಂಟ್ ಆಗಿರುತ್ತದೆ
ಮತ್ತೂ ಎಂ.ಇ.ನಂ. 8066 ದಿನಾಂಕ 1-9-1975
ರಂದು ದಾಖಲೆ ಆಗಿದೆ...

What will be the effect of the re-grant in the name of Dharma Naik in so far as the petitioners are concerned is a matter in respect of which it is not necessary for this Court to give any finding. It is stated in the writ petition that an original suit is filed against the instant petitioners in O.S.No. 10/1991 by the landlords presumably for possession. The question as to what will be the effect of the re-grant in favour of Dharma Naik in so far as the rights of the instant petitioners are concerned is a matter which perhaps will have to be sorted out in the said suit."

2. Obviously what this Court intended was that in view of the circumstance that there is a re-grant in favour of Dharma Naik, the issue would be as to whether Dharma Naik had acquired any right in the property which entitled to evict the tenants and seek possession. That is the question essentially

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essentially in dispute before the Civil Court, Impliedly the petitioners would be raising the contention to the effect that the re-grant in favour of Dharma Naik did not convey any right in him, in view of the circumstance that his right was old in Court auction and the petitioner had purchased the same. These are the issues to be decided in the Civil Court. This Court only clarified that the question of title of Dharma Naik under the re-grant as per Annexure-M dated 21-11-1974 is a matter to be examined and adjudicated in the civil suit. A final decision thereof will conclude the dispute between the parties. Now what transpired subsequent to this was that the petitioners made Annexures - G and H applications claiming re-grant under the Karnataka Village Offices Abolition Act claiming their Court auction purchase. These applications were rejected by Annexure - N order on the footing that the re-grant has already been made in favour of Dharma Naik as per Annexure-M dated 21-11-1974. This order is challenged before this Court.




3. Mr. Jayakumar S. Patil, learned counsel for the petitioners, strenuously contended that the view taken by the 3rd respondent - Tahsildar is illegal and that the petitioners have seriously challenged the correctness of Annexure - M order. Annexure - M order does not form the basis for rejection of the applications of the petitioners. Mr. O. Mahesh, learned counsel appearing for respondents Nos. 4 to 9, submits that whether Annexure - M order is valid or not cannot be gone into in view of the circumstances that it has come into existence as early as in 1974 and this question could have been raised by the petitioners when they contested the writ petitions Nos. 10764 and 10765 of 1991. Having failed to do so, they cannot raise the contention now.


4. I have heard the respective contentions of the learned counsel. I am of the view that the validity of Annexure-M is at large in the suit O.S.No. 10/91 referred to in the judgment in WPs.Nos. 10764 and

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10765/91. A finality of Annexure - M can be achieved only therein. If, as a matter of fact, Annexure - M is held to be valid after contest between the parties, that will conclude the right of the petitioners regarding regrant. On the contrary, if Annexure-M has to fail and cannot be sustained, that will also effect the basic right of the petitioners in the re-grant. Therefore, the first aspect to be decided is as to the validity of Annexure-M order in the suit O.S.No. 10/91. The proper course would then have ^{been} / that in view of the existence of the suit O.S.No. 10/91 has been brought to the notice of the 3rd respondent, and also the judgment of this Court in W.Ps.Nos. 10764 & 10765/91, the 3rd respondent should have deferred the passing of any final order on the applications made by the petitioners for re-grant, namely, Annexure-N order. He should have kept alive the applications Annexure-G and H to be taken-up for hearing after the final disposal of the suit O.S.No. 10/91. The procedure adopted by the 3rd respondent in this behalf cannot be upheld.



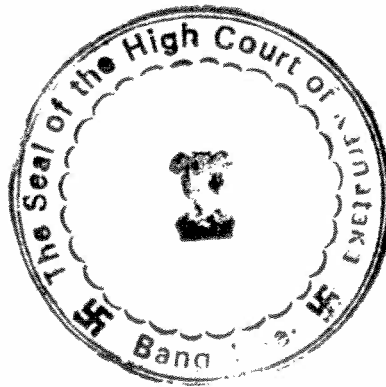
5. If, as a matter of fact, there was no right to be granted in favour of Dharma Naik as per Annexure-M, that is a matter to be gone into and decided by the Civil Court. It is to be shown to be established that if the competent authority, who passed Annexure-M, has not followed the procedural requirement, (See: DHULABAI Vs. STATE OF M.P: AIR 1969 S.C.78) such a decision of a Tribunal would be a nullity. Beset with jurisdictional infirmity, such a decision cannot operate as debarring the right of the petitioner to claim the re-grant. Therefore, the short question to be examined is as to whether the re-grant made in favour of Dharma Naik was valid. If the re-grant is held to be valid, the decision thereon will completely decide the issue raised in this case. In the nature of the view taken by this Court, it is necessary that Annexure-N has to be set aside. I do so. The 3rd respondent - Tahsildar will restore Annexures - G and H applications filed by the petitioners for re-grant, to his file. A decision



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decision thereon can be taken finally after the disposal of O.S.No. 10/91 referred to in the judgment in W.Ps. Nos. 10764 & 10765/91 Annexures - G and H would be heard afresh after the disposal of the suit. The writ petitions are disposed of as above.

Sd/-
JUDGE



Pkc/Hrp